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6                   **IN THE UNITED STATES DISTRICT COURT**  
7                   **FOR THE DISTRICT OF ARIZONA**

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9      Eduardo Aguilera,

No. CV-19-01788-PHX-DJH

10                  Petitioner,

**ORDER**

11                  v.

12      Attorney General of the State of Arizona, et  
13                  al.,

14                  Respondents.

15      This matter is before the Court on Petitioner Eduardo Aguilera’s (“Petitioner”)  
16   Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) (“Petition”) and  
17   the Report and Recommendation (“R&R”) issued by United States Magistrate Judge John  
18   Boyle on October 16, 2019 (Doc. 35). Following a sound analysis, Magistrate Boyle  
19   recommended the Petition be denied and dismissed with prejudice. (*Id.* at 12). Petitioner  
20   filed an Objection (Doc. 36), and Respondents filed a Response (Doc. 39).<sup>1</sup>

21      For the reasons discussed below, the Court overrules Petitioner’s Objection and  
22   adopts Magistrate Judge Boyle’s R&R in its entirety.

23      **I.      The R&R**

24      Judge Boyle’s Report and Recommendation (“R&R”) accurately identifies the four

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26      <sup>1</sup> Petitioner has also filed a Notice: Declaration of Innocence (Doc. 37); Notice:  
27   Acknowledgment of No Confidence (Doc. 38); Notice: 14 Amendment Privileges and  
28   Immunities (Doc. 41); Notice re: Release Date (Doc. 43); Notice of Complaint Filed (Doc.  
54); two Notices of Declaration of Innocence (Docs. 47 & 48); Notice: Conditions and  
Terms of Parole: Null and Void (Doc. 51); Notice of Initiation of Notice of Claim (Doc.  
54); and Notice of Complaint and Motion for Status Update (Doc. 55) (collectively, “Post-  
Objection Filings”).

1 grounds advanced by Petitioner in his Petition, the first being that the Arizona “admin Per  
 2 Se” statute violates the presumption of innocence, the “due process of law under the Fifth  
 3 Amendment,” and “abridge[s] people’s privileges”; the second that the suspension of  
 4 Petitioner’s driving privileges was set to “go into effect on July 20, 2014” if he did not  
 5 request a stay or a Motor Vehicle Department hearing; the third that Petitioner’s conviction  
 6 was obtained in violation of the Fifth Amendment double jeopardy clause; and the fourth  
 7 that the evidence related to his license suspension was not admitted during his state trial.  
 8 (Doc. 35 at 6, 9, 10, 11).

9 After a thorough analysis and review of the record, Judge Boyle found that  
 10 Petitioner’s claims were not cognizable, were unexhausted and procedurally defaulted  
 11 without excuse, and failed because Petitioner could not prove his actual innocence.  
 12 (Doc. 35 at 11-12). Judge Boyle accordingly found that Petitioner was not entitled to  
 13 habeas corpus relief and recommends denial of his Petition. He further recommends denial  
 14 of a Certificate of Appealability and leave to proceed *in forma pauperis* because “dismissal  
 15 of the Petition is justified by a plain procedural bar and reasonable jurists would not find  
 16 the ruling debatable” and because “Petitioner has not made a substantial showing of the  
 17 denial of a constitutional right.” (*Id.* at 12). The parties were advised by Judge Boyle that  
 18 they had “14 days from the date of service of a copy of this Report and Recommendation  
 19 within which to file specific written objections with the Court.” (*Id.* (*citing* 28 U.S.C. §  
 20 636(b)(1); Fed. R. Civ. P. 6 and 72)).

## 21 **II. Petitioner’s Objection**

22 Petitioner timely filed his Objection (Doc. 36). Therein, he argues, as he did in his  
 23 Petition, that he is innocent of the aggravated DUI charges he was convicted of because  
 24 the suspended license he was driving on at the time of his July 2014 arrest was suspended  
 25 via an Admin Per Se—a “fake piece of paper”—and without a hearing. (*Id.* at 2). Petitioner  
 26 argues that when he received a second Admin Per Se on July 5, 2014, after being arrested  
 27 for the underlying charges, he was provided a hearing before his license was suspended,  
 28 unlike when he received his first Admin Per Se. (*Id.*) He argues “[i]f my drivers license

1 is not suspended in the second Admin per se, then what makes the state think that my  
 2 drivers license got suspended in the first Admin per se. They are both the exact same pieces  
 3 of paper both forms have the same value.” (*Id.*) He further argues that Due Process  
 4 guarantees that his license can only be suspended after a court hearing (*id.* at 3), and that  
 5 his conviction offends the double jeopardy clause because he was twice prosecuted for the  
 6 same offense (*id.* at 4).<sup>2</sup> Petitioner makes no reference to Magistrate Judge Boyle’s R&R  
 7 in his Objection.

### 8 III. Standard of Review

9 This Court must “make a *de novo* determination of those portions of the report or  
 10 specified proposed findings or recommendations to which” Petitioner objects. 28 U.S.C.  
 11 § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b)(3) (“The district judge must determine *de*  
 12 *novo* any part of the magistrate judge’s disposition that has been properly objected to.”);  
 13 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (same). In  
 14 doing so, the Court “may accept, reject, or modify, in whole or in part, the findings or  
 15 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ.  
 16 P. 72(b)(3). At the same time, however, the relevant provision of the Federal Magistrates  
 17 Act, 28 U.S.C. § 636(b)(1)(C), “does not on its face require any review at all. . . of any  
 18 issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1989);  
 19 *see also* *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005) (“Of course, *de novo*  
 20 review of a R&R is only required when an objection is made to the R&R”). Objections are  
 21 to the R&R, and are not to “be construed as a second opportunity to present the arguments  
 22 already considered by the Magistrate Judge.” *Betancourt v. Ace Ins. Co. of Puerto Rico*,  
 23 313 F. Supp.2d 32, 34 (D.P.R. 2004). It is well-settled that “failure to object to a  
 24 magistrate judge’s factual findings waives the right to challenge those findings[.]”

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25 <sup>2</sup> Petitioner also advances arguments regarding the validity of his conviction for aggravated  
 26 assault, claims that are currently being decided in another, separate federal habeas action.  
 27 *See Aguilera v. Shinn*, 2:18-cv-02660-SHR-BGM. “A federal court has neither the power  
 28 to render advisory opinions nor to decide questions that cannot affect the rights of litigants  
 in the case before them.” *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (quotations and  
 citations omitted). The Court lacks jurisdiction to review or decide questions in a case that  
 is not before it. Petitioner’s arguments regarding his aggravated assault conviction (Doc.  
 36 at 4-6) are therefore overruled and dismissed.

1     *Bastidas v. Chappell*, 791 F.3d 1155, 1159 (9th Cir. 2015) (quoting *Miranda v. Anchondo*,  
 2     684 F.3d 844, 848 (9th Cir. 2012) (internal quotation marks omitted) (footnote omitted)).

3                 To enable district court review of an R&R, Rule 72(b)(2) also has a specificity  
 4     requirement: namely, it requires parties make “*specific* written objections to the proposed  
 5     findings and recommendations.” Fed. R. Civ. P. 72(2) (emphasis added). “[A]lthough the  
 6     Ninth Circuit has not yet ruled on the matter, other circuits and district courts within the  
 7     Ninth Circuit have held when a petitioner raises a general objection to an R&R, rather than  
 8     specific objections, the Court is relieved of any obligation to review it.” *Martin v. Ryan*,  
 9     2014 WL 5432133, at \*2 (D. Ariz. 2014) (citing *See, e.g., Warling v. Ryan*, 2013 WL  
 10     5276367, at \*2 (D. Ariz. 2013) (“[A] general objection ‘has the same effect as would a  
 11     failure to object.’”)); *Gutierrez v. Flannican*, 2006 WL 2816599 (D. Ariz. 2006) (citing  
 12     *Goney v. Clark*, 749 F.2d 5, 7 (3d Cir. 1984)). *See also McCullock v. Tharratt*, 2017 WL  
 13     6398611, at \*1 (S.D. Cal. Dec. 15, 2017) (“[G]eneralized or blanket objections do not  
 14     trigger the *de novo* requirement.”).

15     **IV. Analysis**

16                 The Court finds that it has no independent obligation to engage in a *de novo* review  
 17     of the R&R because Petitioner’s Objection merely reiterates the arguments he makes in his  
 18     Petition. (*See Doc. 36* (“I am again going to explain to the courts and the State why my  
 19     drivers license was valid.”). Indeed, Petitioner does not specifically challenge any findings  
 20     or analysis made by Judge Boyle in the R&R. Judge Boyle’s R&R clearly analyzed and  
 21     reached conclusions on each of the grounds in Petitioner’s Petition. (*See Doc. 35* at 6-11).  
 22     Petitioner seems to have paid this attention no mind, as he does not identify in his Objection  
 23     where or how he thinks the Magistrate Judge went wrong. He simply repeats his Petition  
 24     arguments. If this Court were to undertake *de novo* review of the arguments in Petitioner’s  
 25     Objection, which merely replicate the arguments he made in his Petition, it would entirely  
 26     defeat the whole purpose of having magistrate judges assist the federal judiciary in these  
 27     matters. Congress authorized district courts to refer matters to magistrate judges for  
 28     hearings and report and recommendations, with district courts conducting *de novo* review

1 only of “those portions of the [magistrate’s] report. . . to which objection is made.” 28  
 2 U.S.C. § 636(b)(1). The “obvious purpose” of the specific objection requirement, “is  
 3 judicial economy.” *Haley v. Stewart*, 2006 WL 1980649, \*2 (July 11, 2006) (citing  
 4 *Thomas*, 474 U.S. at 149; *Reyna-Tapia*, 328 F.3d at 1121). “This efficiency would be lost  
 5 if parties were permitted to invoke the *de novo* review of the district court merely by  
 6 interposing general, non-specific objections to the magistrate’s R&R,” *id.*, or, as in this  
 7 case, by allowing the party “a second opportunity to present the arguments already  
 8 considered by the Magistrate Judge.” *Betacourt*, 313 F. Supp. 2d at 34.

9       In light of the foregoing, the Court deems the arguments Petitioner advances in his  
 10 Objection ineffective objections to the R&R. *See id.* at \*2 (citing *Thomas*, 474 U.S. 149).  
 11 His failure to identify any flaws in the legal analysis of the R&R has the same effect as a  
 12 complete failure to object. *See Warling*, 2013 WL 5276367, at \*2 (citing *Howard*, 932  
 13 F.2d at 509; *Haley*, 2006 WL 1980649, at \*2).

14       Although the Court could simply accept the R&R based upon this case law, it did  
 15 not. The Court reviewed the R&R, the exhibits referenced therein, including the December  
 16 16, 2015, transcript of Petitioner’s trial proceedings (Doc. 31-3 at 83), and the applicable  
 17 law. The Court is left with the firm conviction that Magistrate Judge Boyle’s  
 18 recommendations are well taken and are supported by a correct application of the law  
 19 throughout. Petitioner’s Objection is therefore overruled.

20           Accordingly,

21       **IT IS ORDERED** that Petitioner’s Objection to the R&R (Doc. 36) is  
 22 **OVERRULED**. Magistrate Judge Boyle’s Report and Recommendation (Doc. 35) is  
 23 **ACCEPTED** and **ADOPTED** as the Order of this Court. The Petition for Writ of Habeas  
 24 Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DENIED** and **DISMISSED WITH  
 25 PREJUDICE**.

26       **IT IS FURTHER ORDERED** that Petitioner’s Notice of Complaint and Motion  
 27 for Status Update (Doc. 55) is **GRANTED**, insofar as this Order provides the status of  
 28 Petitioner’s Petition. The remainder of Petitioner’s Post-Objection Filings (Docs. 37, 38,

1 41, 43, 46-48, 51, 54), construed as untimely, supplemental objections, are **DENIED**.

2 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing  
3 Section 2254 Cases, a Certificate of Appealability and leave to proceed in forma pauperis  
4 on appeal are **DENIED** because dismissal of the Petitioner is justified by a plain procedural  
5 bar and reasonable jurists would not find the ruling debatable, and because Petitioner has  
6 not made a substantial showing of the denial of a constitutional right.

7 **IT IS FINALLY ORDERED** that the Clerk of the Court shall terminate this action  
8 and enter judgment accordingly.

9 Dated this 4th day of May, 2021.

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13 Honorable Diane J. Humetewa  
United States District Judge

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